



STATE WATER PROJECT CONTRACT EXTENSION PROJECT

Meeting Summary

State Water Project Contract Extension Project

February 26, 2014 10:00 AM – 5:00 PM

Meeting Attendance List

<p><u>California Department of Water Resources Lead Negotiators</u></p> <ul style="list-style-type: none"> • Steve Cohen, California Department of Water Resources • Rob Cooke, California Department of Water Resources • Perla Netto-Brown, California Department of Water Resources • Vera Sandronsky, California Department of Water Resources • Carl Torgersen, California Department of Water Resources • Ralph Torres, California Department of Water Resources 	<ul style="list-style-type: none"> • Kathy Cortner (by phone), Mojave Water District • Bob Perreault, Plumas County Flood Control & Water Conservation District • Douglas Headrick, San Bernardino Valley Municipal Water District • Jeff Davis (by phone), San Geronio Pass Water Agency • Ray Stokes, Santa Barbara County/Central Coast Water Authority • Dana Jacobson, Santa Clara Valley Water District • David Okita, Solano County Water Agency • Steve Wickstrum (by phone), Ventura County Flood Control District
<p><u>State Water Project Contractor Lead Negotiators</u></p> <ul style="list-style-type: none"> • Dan Flory, Antelope Valley – East Kern Water Agency • Steve Peterson (by phone), Alameda County Water District • Mike Wallace, Alameda County Flood Control Water Conservation District, Zone 7 • Paul Gosselin, Butte County • Mark Gilkey (by phone), County of Kings/Tulare Lake Basin Water Storage District • Tom Glover (by phone), Dudley Ridge Water District • Valerie Pryor, Castaic Lake Water Agency • Mark Krause (by phone), Desert Water Agency • Curtis Creel, Kern County Water Agency • Steve Arakawa, MWD of Southern California • Deven Upadhyay, MWD of Southern California 	<p><u>California Department of Water Resources Staff</u></p> <ul style="list-style-type: none"> • Ted Alvarez, California Department of Water Resources • Terri Ely, California Department of Water Resources • Avery Estrada, California Department of Water Resources • Scott Jercich, California Department of Water Resources • Spencer Kenner, California Department of Water Resources • Kathie Kishaba, California Department of Water Resources • Philip LeCocq, California Department of Water Resources • Chris Martin, California Department of Water Resources • Jeremiah McNeil, California Department of Water Resources

<ul style="list-style-type: none"> • Russell Mills, California Department of Water Resources • Mehdi Mizani, California Department of Water Resources • Dave Paulson, California Department of Water Resources • Nancy Quan, California Department of Water Resources • David Sandino, California Department of Water Resources • Dena Uding, California Department of Water Resources • Pedro Villalobos, California Department of Water Resources • Lisa Toms, California Department of Water Resources <p><u>DWR Consultants for Contract Extension</u></p> <ul style="list-style-type: none"> • Tom Berliner, Consultant • Erick Cooke (by phone), Environmental Science Associates • Cathy McFee (by phone), Environmental Science Associates • Barbara McDonnell (by phone), MWH Global • Doug Montague, Montague, DeRose and Associates <p><u>State Water Project Contractors, and SWC, Inc.</u></p> <ul style="list-style-type: none"> • Bruce Alpert (phone), Butte County • Josh Nelson, Best, Best & Krieger LLP/Crestline-Lake Arrowhead Water Agency • Milli Chennell, Kern County Water Agency • Royce Fast, Kern County Water Agency • Ted Page, Kern County Water Agency • Don Marquez, Kern County Water Agency 	<ul style="list-style-type: none"> • Amelia Minaberrigarai (by phone), Kern County Water Agency • Jaime Dalida, MWD of Southern California • Kevin Donhoff, MWD of Southern California • David Reukema, MWD of Southern California • John Schlotterbeck, MWD of Southern California • Craig Settlemire, Plumas County Flood Control and Water Conservation District • Leah Wills (by phone), Plumas County Flood Control and Water Conservation District • Matt Naftaly (by phone), Santa Barbara County Water Agency • Theresa Lightle, State Water Contractors, Inc. • Stan Powell, State Water Contractors, Inc. • Julie Ramsay, State Water Contractors, Inc. • Chantal Ouellet (by phone), Tulare Lake Basin Water Storage District • Lisa Kern (by phone), Ventura County Flood Control District <p><u>Public</u></p> <ul style="list-style-type: none"> • Dan McDaniel (by phone), Central Delta Water Agency • Patricia Schifferle (by phone), Planning and Conservation League <p><u>Facilitation Team</u></p> <ul style="list-style-type: none"> • Alex Braunstein, Kearns & West • Mike Harty, Kearns & West • Kelsey Rugani, Kearns & West • Anna West, Kearns & West
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I. Welcome/Introductions

There were roundtable introductions of the negotiation teams and staff attending in person and by phone. Members of the public were given the opportunity to introduce themselves.

II. Meeting Overview

Anna West welcomed everyone to the 21st negotiation session. She reviewed the ground rules the action list and asked if there are additional edits to the February 12th negotiation session meeting summary. Hearing no objections, the meeting summary was approved and will be posted to the website.

III. Objectives Discussion

Both DWR and the Contractors reviewed revised versions of Objective 2F: Cost Recovery. Carl Torgersen, Department of Water Resources, shared that DWR agrees with the concepts proposed by the Contractors. He suggested that in the unlikely event that the Department Director decides not to seek reimbursement from the Contractors, an additional sentence should be added to the first paragraph stating: "If the Department proposes to not charge any Contractor the full amount that the Department is entitled to charge the Contractor under the contract, DWR shall bring the proposal to the Finance Committee for purposes of developing a recommendation to the Director regarding the proposal."

David Okita, Solano County Water Agency, responded that the Contractors would caucus on adding that language. David added that the Contractors envision attention on cost recovery going beyond the purpose of the proposed SWRDS Finance Committee processes.

David Okita then reviewed the Contractors' revised Objective 3D: Billing Authorization language. At the last negotiation session, the Department shared concern over having too specific of language included in the Contract. David shared that to address this concern, the Contractors' revised language is less specific while still capturing that the Contractors will not be charged for Fish and Wildlife enhancement costs and recreation capital and O&M costs.

Carl responded that the Department proposes using the previous language that was taken directly from the Davis-Dolwig Act. David said that Contractors will revisit this Objective in caucus.

David Okita then reviewed the Contractors' edits to the latest version of the SWRDS Finance Committee Charter. David shared that the Contractors are fine with the language in the first three pages, but in II. SWRDS Finance Committee, D. Meetings and Agendas, 3, the Contractors need clarification on whether the designated Contractors representatives can participate in the discussion of agenda items. Carl responded that the Committee meetings would be well-structured and formal. Carl explained that the Chair or Vice Chair would open sections of the agenda up for comments, but it would be formal and structured. The Contractors and the Department agreed on adding the word "designated" to the following sentence in the Charter: "In addition to the ten (10) designated Members, the meetings of the SWRDS Finance Committee shall be open to all designated Contractor Representatives and DWR alternates."

David then suggested making the following addition to II. SWRDS Finance Committee, I. Recommendations to the DWR Director, "Within thirty (30) business days after receipt of a recommendation or recommendations, the Director will issue a written decision of acceptance or rejection and an explanation of the specific reasons for his/her decision. If the Director needs additional information and time, the Finance Committee will be notified." David shared that understanding the Director's decision is important for the Committee and by providing an explanation, there is a process and a paper trail for each decision. Carl Torgersen said that the Department would consider this in caucus.

On I. Designation of SWRDS of Chief Financial Manager (CFM), A, Carl Torgersen suggested keeping in the phrase “consistent with state personnel rules and regulations,”. David Okita responded that the Contractors are fine with incorporating this language.

David Okita continued reviewing the Contractors’ edits to the Charter by sharing that the Contractors are fine with removing the language on voting since the Contractors and the Department agreed on having the Committee reach consensus on all issues.

David suggested that for V. Development and Approval of SWRDS Financial Enhancement Work Plans, D that it be added that the SWP Deputy Director will be responsible for ensuring that the SWRDS work plans are implemented in a timely manner. David clarified that the SWP Deputy Director would only oversee efficient work plan(s) implementation if a CFM is not appointed at the time the work plans are executed.

On VI. Review of SWRDS Financial Information and Reports, (Objective 2G: Reporting Requirements) David said that the Contractors want to have the reporting principles language included within the Contract, not the Charter. He shared that the Contractors will continue to work on this section in caucus. David explained that while the Department believes that Objective 2G: Reporting Requirements should be included in the Charter and views it as a philosophical document, David shared that the Contractors view it as a requirements document and therefore it is an appropriate attachment to the Contract. Carl responded that DWR would discuss this issue internally and that the Department is in agreement with the Contractors on the specific language; it’s a matter of where the language is located.

David then addressed Objective 1 of the current version of the Contract Extension Offer. On Objective 1: Term of Contract, A. Water Supply Contract Term Extension, 2., David suggested that the Department’s interest in having language on the Bondholder protection issue could be addressed by more specific language. He continued that the language as currently drafted is concerning to the Contractors since the Contract language could become outdated if the law changes. Carl suggested that the Department will consider this in caucus.

Regarding Objective 4, Carl Torgersen shared that DWR is moving forward with the public negotiation process on the Bay Delta Conservation Plan (BDCP) and that the Department will be responding to the Contractors’ letter on cost allocation. Ray Stokes, Central Coast Water Authority/Santa Barbara County, asked if the Department’s letter would primarily address the financial aspects of the BDCP. Carl responded that the Department’s letter would focus on cost allocation. Ray asked if all aspects of the BDCP will be covered in the public negotiation process and if getting that process established will occur quickly. Carl answered yes to both questions.

Paul Gosselin, Butte County, stated that Butte County needs Objective 4 to be addressed one way or another in order to complete the negotiation. Bob Perreault, Plumas County Flood Control and Water Conservation District, added that the proposed language of Objective 4 is not very different from what is shared in the Contractors’ letter. He would appreciate additional discussion and resolution of Objective 4 even if it is through a separate negotiation process in a timely manner.

The Contractors and DWR convened the lunch caucuses.

IV. Objectives Discussion Continued

The Department and the Contractors each reviewed their revised Objective 3D: Billing Authorization documents. David Okita shared that the Contractors' revision incorporated the three originally proposed paragraphs from a previous offer by the Contractors. David said that the first paragraph was background language so the Contractors suggest deleting it. The Contractors also propose deleting "development" in the second paragraph. David shared that the Contractors suggest deleting "development" to be clear that it includes both development and O&M costs which are not chargeable to the Contractors. Steve Cohen, Department of Water Resources, responded that the Department did not delete "development" because they inserted language directly from the statute. The Department's latest version added an additional sentence to the first paragraph, which is direct language from the Davis-Dolwig Act. David said that the Contractors would discuss this further in caucus.

David Okita then reviewed the Contractors' revised Objective 2F language on cost recovery. After reviewing the most recent version, the Contractors decided to propose their original language. David shared that ultimately, the result will be same; the Committee will make a recommendation to the Director in the event that DWR decides not to seek full reimbursement for SWRDS costs. The exact process for how the issue will be discussed at the Finance Committee still needs to be negotiated. David elaborated that these types of actions require special attention and documentation. Curtis Creel added that the Contractors' concern is not associated with DWR spending the funds, but being notified about how the funds are reimbursed.

Carl Torgersen said that since this 2F cost recovery item is a specific Objective in the Contract, it will receive special attention. Carl thinks the Department's proposal covered the Contractors' concerns with the exception of the 90-day notice. Curtis Creel explained that the 90-day notice is to give Contractors enough time to inform their Boards of Directors and constituents about the potential cost increase. David added that 90 days is referenced twice in the Objective 2F language, but those dates are not additive; it's intended to be one 90-day period.

Steve Arakawa, MWD of Southern California, asked if the Director would provide rationale for his/her decisions on cost recovery. Carl answered that the Director may not need a justification. David Okita added that the Contractors have considered two scenarios: one where the Director would make a decision and then solicit input from the Committee and one is where the issue is first discussed at the Committee and then brought to the Director. Carl said that in most scenarios, it is likely that the issue will be discussed at the Committee before coming to the Director. David Okita agreed, but suggested that the Contractors want to have a clear process in place in the event that a Contractor goes directly to the Director first.

Following a caucus, Carl shared revisions to the Objective, including incorporation of the 90-day notice and that the Director would provide a justification for his/her decision if he/she rejects the recommendation. Carl said that if the Director agrees with the Committee's recommendation, the justification is described in the recommendation itself and additional rationale for the decision is not necessary. David suggested that the proposed language appears to address Contractors' concerns. Objective 2F language on cost recovery was agreed upon by the group.

On Objective 1: Term of Contract, 2., Carl Torgersen reported that DWR will consider eliminating their proposed language at the end of the Contract Extension process, based on the contents of the full AIP package.

On Objective 2G: Reporting Requirements, Carl Torgersen said that the Department is in agreement with the Contractors on the language, and that the Department prefers that the language be included in the Charter. David Okita shared that the Contractors think Objective 2G covers all of SWRDS reporting and not just reporting to the Finance Committee. The Contractors believe Objective 2G should be in the Contract or as an exhibit to the Contract. Curtis Creel said that the Contractors will caucus on where this language will reside; he suggested that perhaps Objective 2G's principles could go into the Charter with reference to it in the Contract.

On Objective 2H: 51(e) Revenue Reporting Requirements, David Okita suggested that the Contractors believe this language should be inserted in the Contract amendment. Carl Torgersen agreed. Anna West clarified that K&W will insert this language in the most recent Offer document.

Carl Torgersen then provided an overview of DWR's edits to the SWRDS Finance Committee Charter. Carl said that DWR changed all mentions to the State Water Project to SWRDS since the Finance Committee will focus on the financial policies and processes of SWRDS. In the fifth principle, the Department edited the language to reflect that the main purpose of the Committee is to maintain the financial integrity of SWRDS. The Department also deleted the sixth and seventh principles.

Carl Torgersen then shared that the Department deleted that the Director would provide a written response when he/she rejects a recommendation. David Okita asked how the Director's responses would be documented if they are not all in writing. Carl responded that there may be times when the Director will want to visit the Finance Committee and issue a verbal decision, giving the Committee a chance to ask questions. Steve Arakawa clarified that if the Director provides a verbal justification, that language will be included in the Finance Committee's meeting minutes.

Continuing to review the Departments edits to the charter, Carl Torgersen suggested that the Department proposes deleting Section 6: Review of SWRDS Financial Information and Reports and inserting the Objective 2G principles instead. David Okita said that the Contractors could be fine with inserting the principles into the Charter as long as there is some kind of "boiler plate" reference on these 2G principles included within the Contract.

Carl further explained that in the Charter the Department proposes striking the language on dispute resolution. The Department suggests that the Committee can utilize Section VIII. A. on enforcement to mitigate any issues, Carl explained that the Department also supports all of the General Provisions except for "Successors and Assigns" needs editing. Steve Cohen described that the way "Successors and Assigns" is written it could be interpreted that someone who is not a Contractor could participate on the Committee. David Okita responded that the Contractors can address this concern through further editing in a caucus.

Steve Cohen shared that the Charter will need to be binding and that the Department added language conveying that point. He added that there is nothing in the current Contract on dispute

resolution, and therefore the Department does not believe that dispute resolution is needed for the Charter. Steve Arakawa asked how the minutes of Finance Committee meetings will be approved. Steve Cohen suggested that the minutes will be approved by consensus, similar to how meeting summaries are approved in the Contract Extension process.

Steve Arakawa shared his concern with not having dispute resolution in the Charter. Carl Torgersen clarified that the grounds for a dispute would be about DWR's participation in the Committee not about what decisions the Director makes. Curtis Creel agreed that the concern is about proper documentation and participation; he clarified that dispute resolution relates to the performance of the Committee. As an example, Curtis shared that if the Chair and Vice Chair disagreed on an agenda item coming to the Committee and one of them wants the Committee to discuss it but the other does not, dispute resolution language could be applicable.

Steve Cohen stated that similar to the current Contract where the Contract has language on enforcement, the Contractors can obtain a court order if DWR is not meeting its obligations within the Charter. Steve Arakawa suggested establishing a business process rather than a legal process is preferred. Anna West asked if there is a current process between DWR and the Contractors for contract disputes. Steve Cohen answered that the Contractors can protest and send DWR a notice.

Carl Torgersen shared that by allowing the Chair and Vice Chair to put any item on the agenda, the Committee will not be limited; there won't be disputes on agenda topics. The Committee can also produce multiple recommendations on any given topic. He said that dispute resolution language would only relate to if the Director would not appoint staff to the Committee or if the Department is not willing to participate in the Committee.

Regarding memorializing the Director's decisions, Carl Torgersen shared that the Director may not be able to memorialize in writing certain decisions. If there is a personnel issue, for example, there are procedures that the Director must follow that cannot be put into writing. Steve Arakawa understood the concern with personnel issues, but if the Director makes a decision regarding cost recovery, it is important that the decision is clear and documented. Carl responded that those cost recovery decisions will be documented.

Paul Gosselin shared that if one or more Contractors have an issue with a certain policy or procedure, this may not be an appropriate issue to bring to a court of law. Carl responded that if two Contractors had an issue, they would be able to both provide recommendations to the Director. David Okita said that the Contractors understand DWR's position and will discuss dispute resolution in caucus.

David Okita revisited Objective 3D: Billing Authorization asking for clarification. He asked if it is the Department's understanding that the current language, including development, means that the Department cannot bill the Contractors for O&M recreation costs. Steve Cohen responded that the Department can only bill the Contractors for what they can bill the Contractors for; the Department abides by the Davis-Dolwig Act the way it is written, and this means that the Department cannot bill for O&M. Steve Arakawa asked if the Department could bill the Contractors for a capital cost or an O&M cost if it is required under a federal statute or permit such as the Federal Energy Regulatory Commission (FERC). Steve Cohen responded that he has not been involved with the Oroville settlement agreement with FERC. Ralph Torres, Department

of Water Resources, shared that there might be language in the California Water Code or the Davis-Dolwig Act saying that DWR cannot charge the Contractors for recreational costs even if it is required by a federal statute. The Department will research and locate that language.

Steve Arakawa shared that the Contractors will want clarity on whether fish and wildlife enhancements, and recreation capital and O&M costs can be charged to the Contractors under a FERC license or other federal action or statute; not just recreational costs.

Bob Perreault reminded DWR that Butte County and Plumas County Flood Control and Water Conservation District are waiting for a response to the Contractors' letter on cost allocation. Carl Torgersen said that the Department is preparing a response from the Director on the Contractor's letter. Carl also asked Paul if it would be acceptable if Carl prepared a response to Plumas County's specific letter. Bob suggested this would be fine. Carl suggested that he will draft a response to address the Plumas' letter that will provide more detail about the BDCP negotiation process timing.

I. Next Steps

DWR and the SWP Contractors discussed the Contract Extension schedule and agreed the next meeting will be on Thursday, March 6th.

II. Public Comment

There were no public comments.

III. Adjourn

The meeting was adjourned.

Action Items

Responsibility | Due Date

1.	Draft February 26 2014 negotiation session meeting summary.	K&W ASAP
2.	Kearns & West to incorporate Objective 2H: 51(e) Revenue Reporting Requirements into the latest Contract Extension Offer.	K&W ASAP
3.	SWP Contractors to review DWR's February 26, 2014 SWRDS Finance Committee Charter V4.	SWP Contractors 3/6
4.	DWR to research the California Water Code and the Davis-Dolwig Act to see if the Department can or cannot charge the Contractors for recreation, capital and O&M, and enhancements for fish and wildlife, including those that are permitted (by FERC, for example).	DWR 3/6
5.	K&W to organize and post all current versions of documents to the website.	K&W ASAP
6.	SWP Contractors to develop a proposed approach for	SWP Contractors 3/6

	selecting the five out of 29 Contractors representatives which can be added to the Charter.	
7.	DWR to prepare a letter in response to the Plumas County Flood Control and Water Conservation District's letter.	DWR 3/6
8.	DWR to prepare a letter in response to the Contractors' letter on BDCP cost allocation.	DWR ASAP